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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3849 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANDABHAI DALPATBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3849 of 2004

MR SB VAKIL, Senior Advocate for Petitioner.

..... for Respondent No. 1-4

M/S THAKKAR ASSOC. for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 25/08/2004

CAV JUDGEMENT

In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the judgment and order dated

17th January 2004/21st February 2004 passed by the Secretary (Appeals), REvenue Department, Government of GUjarat, in Revision Application No. 44 of 2003 partly allowing the same and quashing and setting aside the order passed by the Collector, Surat, dated 9th April 2003 as well as teh order passed by Deputy Collector, Choryasi Prant, Surat dated 6th July 2002 and confirmign the order passed by the Mamlatdar, Choryasi Prant dated 11.6.2001 in respect to the revenue entry No. 4892 dated 15th February 2001 and further passing an order to make necessary entry with regard to injunction granted by Civil Court in Regular Civil Suit No. 156 of 2001 and the entry would be subject to the ultimate outcome of the suit pending between the parties.

2. The petitioner, Gandabhai Dalpatbhai Patel was owner of land bearing Survey No. 306, Block No. 287 situate at Village Pal, Taluka Choryasi,District-Surat. The petitioner had executed one power of attorney in favour of Jagjivanbhai Madhabhai Patel on 11th March 1982. The power of attorney holder Jagjivanbhai Madhabhai Patel had executed the sale deed in favour of respondent No.5 herein on 20th April 2000 and sold the land in question to the respondent No.5 Vimalkumar Khandubhai Patel. Necessary entry was also made in the record of rights vide entry No. 4892 on 15th February 2001. The petitioner herein objected to the said entry being mutated in the name of respondent No.5 herein purchaser in the revenue record and objections were submitted before Mamlatdar, Choryasi Prant,Surat. The Mamlatdar, Choryasi Prant treated the same as RTS Disputed Case No. 10 of 2001 and after considering the objections submitted by the petitioner herein confirmed Entry No. 4892 dated 15th February 2001 and directed to certify the said entry.

2.1. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Choryasi dated 11th June 2001 passed in RTS Disputed Case No. 10 of 2001 the petitioner preferred appeal before the Deputy Collector, Choryasi Prant, Surat being RTS Appeal No. 47 of 2001 and the Deputy Collector, Choryasi Prant,Surat vide his judgment and order dated 6.7.2002 allowed the said appeal by quashing and setting aside the roder passedby the Mamlatdar, Choryasi dated 11th June 2001. Being aggrieved and dissatisfied with the judgment and order dated 6.7.2002 passed by the Deputy Collector, Choryasi Prant, Surat in RTS Appeal No. 47 of 2001, the respondent No.5 preferred appeal before the Collector and the Collector, Surat vide his judgment and order dated 11th April 2003 dismissed the said revision

application/appeal and confirmed the order passed by the Deputy Collector,Surat dated 6.7.2002. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Surat dated 10th April, 2003 in RTS Appeal No. 35 of 2002 in dismissing the same and confirming the order passed by the Deputy Collector, Choryasi Prant dated 6.7.2002 in cancelling Entry No. 4892 dated 15th February 2001 the respondent No.5 preferred revision application before the State Government, i.e., Secretary (Appeals), Revenue Department, was numbered as Revision Application No. 44 of 2003. The Secretary (Appeals), considering the fact that Civil Suits are pending between the parties and the dispute with regard to title cannot be decided by the REvenue authorities in RTS proceedings partly allowed the revision application by quashing and setting aside the order passed by the Collector,Surat dated 9th April 2003 as well as the judgment and order passed by the Deputy Collector,Choryasi Prant, Surat dated 6.7.2002 restoring the order passed by Mamlatdar, Choryasi dated 11.6.2001. However, considering the fact that there was an injunction granted by Civil Court in Regular Civil SUit No. 156 of 2001 the revisional authority also directed to make necessary entry with regard to injunction granted by the Civil COurt in REgular Civil Suit No. 156 of 2001 and further passed an order that the aforesaid entry would be subject to the ultimate outcome of Regular Civil Suit No. 156/2001. Being aggrieved and dissatisfied with the judgment and order dated 17th January 2004 passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No. 44 of 2003, the petitioner herein, original land-owner, has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri SB Vakil, learned Senior Advocate appeared on behalf of the petitioner. Shri PM Thakkar, learned Senior Advocate appeared on behalf of respondent No.5 and made their respective submissions.

4. Shri SB Vakil, learned Senior Advocate has challenged the legality and validity of the order passed by the Secretary (Appeals) on the following grounds;

(i) The Secretary, revisional authority has not properly appreciated the fact that the Mamlatdar has not considered whether the power of attorney was genuine or not;

(ii) The Mamlatdar has also not considered whether while executing the power of attorney the

signature of the petitioner was identified before the Notary or not;

(iii) The Mamlatdar has also not considered the fact whether the power of attorney holder Jagjivanbhai was authorised to transfer/sell the land in question on behalf of the petitioner or not;

(iv) There is nothing on record to show that power of attorney was produced before the Mamlatdar or not;

(v) The Revenue authority has also not considered the fact that by selling the land there would be a fragmentation and therefore the land could not have been sold to the respondent No.5 and the transaction would be hit by the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act;

(vi) The Mamlatdar should not have posted the entry solely on the basis of sale deed.

5. Shri SB Vakil, learned Senior Advocate appearing on behalf of the petitioner has vehemently submitted that the power of attorney does not authorise to sell the land in question. He has further submitted that even the signature of the petitioner in the power of attorney has also not identified before the Notary Public and therefore it was not a valid power of attorney. He has further submitted that there is nothing on record to show that the power of attorney was produced before the Sub-Registrar while executing the sale deed with regard to land in question. He has further submitted that when the Mamlatdar was approached to make necessary entry on the basis of the registered sale deed which was not executed by the original land-owner but it was executed by the power of attorney it was the duty of the Mamlatdar and the appropriate authority to hold an enquiry with regard to genuineness of power of attorney and the sale deed and to decide whether the power of attorney was authorised to sell the land in question or not and/or whether the power of attorney is genuine and/or in accordance with law or not. In absence of any such enquiry mechanically and solely on the basis of the sale deed the entry could not have been posted. He has further submitted that it is true that the revenue authority cannot decide the dispute with regard to title but still when the sale deed was produced as having been executed by power of attorney some preliminary enquiry was required to be made by the authority with regard to

genuineness of the transaction, as under Section 135-J of the Bombay Land Revenue Code it has presumptive value and there is a presumption that an entry in the record of rights and a certified entry in the Register of Mutation sale deed presumed to be true until the contrary is proved and a new entry is lawfully substituted thereof. Considering the provisions of Section 135-J, Shri Vakil has tried to distinguish the judgments of Hon'ble Supreme Court in the case of Sankalchand Jaychandbhai Patel Vs. Vithalbhai Jaychandbhai Patel - reported in 1996(6) SCC 433 as well as in the case of Durgadas Vs. Collector, Ahmedabad & Others - 1996(5) SCC 618 in which it is held that entries in the revenue records or mutation entries, they do not confer any title to the property, and that it is only an entry for collection of land revenue from the person in possession. Shri Vakil has further submitted that if it is to be construed that the revenue authority cannot decide the dispute with regard to title, then the Secretary (Appeal) should not have gone into the validity of the transaction and should not have set aside the order passed by the Collector as well as of the Deputy Collector and should not have confirmed the order passed by the Mamlatdar with regard to Entry No. 4892.

5.1. Relying upon the judgment reported in AIR 1992 Bombay Page 149, more particularly Para 10 thereof, Shri Vakil has submitted that as in the power of attorney the signature of the petitioner is not identified before Notary Public and there is no such endorsement the power of attorney cannot be said to be a valid power of attorney and such power of attorney cannot be said to have been executed by the alleged executant. Therefore he has submitted that the sale deed on the basis of the aforesaid power of attorney cannot confer any title in favour of respondent No.5 more particularly when the same is in favour of son-in-law of the power of attorney, and considering the fact that there is a fraud committed by the power of attorney holder this Court should exercise the power even under Article 227 of the Constitution of India. He has therefore requested to allow the present Special Civil Application and to quash and set aside the order passed by the Secretary (Appeals) and to restore the order passed by the Deputy Collector, Choryasi Prant, Surat.

6. On the other hand, Shri PM Thakkar, learned Senior Advocate appearing on behalf of respondent No.5, has submitted that respondent No.5 has purchased the land in question by registered sale deed. The documents were submitted before the Sub-Registrar for registration and thereafter the mamlatdar was approached for necessary

entry to that effect. He has further submitted that the revenue authorities are not required to decide the question of title. The revenue authorities are not required to go into the validity of the transaction and have enquiry with regard to power of attorney and the genuineness of the sale deed. It is ultimately for the Civil Court to decide the dispute with regard to title, genuiness of sale deed and power of attorney. Relying upon Section 135-B of the Bombay Land Revenue Code, Shri Thakkar has submitted that in fact the revenue authorities are required to make necessary entry on the basis of registered sale deed and even the notice under Sectin 135-D is not required as held by this Court in the case of Nathubhai Meraman Darji Vs. Special Secretary (Appeals) reported in 1996 GCD Page 691. He has further submitted that in fact the civil suits are pending between the parties and the Secretary (Appeals) had tried to struck the balance by directing to make necessary entry with regard to injunction granted by the Civil Court in Regular Civil Suit No. 156 of 2001 and also by passing an order with the aforesaid entry No. 4892 would be governed by the ultimate outcome of the dispute before the Civil Court. Relying upon the judgment of the Hon'ble Supreme Court in the case reported in 1996(5) SCC 618; 1996(6) SCC 433; 1996(1) GLH 816; and 2003(1) GLH Page 30 and other judgments which lay down the law that entries in the revenue records or mutation entries do not confer any title to the property. It is only an entry for the purpose of collection of land revenue from the person in possession and that revenue authority has no jurisdiction to decide the disputed qustion of title while considering RTS proceeding. He has further submitted that the revenue authority was not required to consider the genuineness of power of attorney and/or sale deed. He has further submitted that the enquiry which was required to be made while registering the document of sale deed cannot be permitted to be done by the revenue authority while exercising power in RTS proceedings. He has further submitted that the moment the sale deed is produced, considering the provisions of Section 135-D the revenue authorities were required to make necessary entry and to give effect to the sale deed and the revenue authority cannot be permitted to hold the inquiry with regard to genuineness of the sale deed and/or power of attorney. For all these reasons, Shri Thakkar has requested to dismiss the present Special Civil Application.

7. In reply to teh submission made on behalf of Shri Thakkar, SHri Vakil has submitted that if the sale deed is executed by the original-land owner then it is a

different case. However, when the sale deed which is produced before the Mamlatdar is executed by the power of attorney holder, then it is the duty of the Mamlatdar to hold a preliminary inquiry with regard to genuineness of power of attorney and sale deed before making necessary entry on the basis of the said registered sale deed and merely on production of sale deed the Mamlatdar cannot be permitted to make necessary entry in the record of rights.

8. Heard the learned advocates appearing on behalf of the parties. So far as the contention on behalf of the petitioner and the propoosition of law laid down in the judgment reported in 1992 Bombay Page 149 is concerned, there is no dispute with regard to said proposition of law. The only question is whether such an enquiry is required to be conducted by Mamlatdar in an RTS proceeding or not. The questions in relation to genuineness of power of attorney and/or authority, and whether the power of attorney holder can execute the sale deed or not, are the questions which are required to be considered by a Civil Court and not in an RTS proceeding while mutating necessary entry in the record of rights which is only made for fiscal purpose and which does not confer any right, title or interest in favour of a person in whose favour entry is made. As held by the Hon'ble Supreme Court in the case of Swarni (SMT) Vs. Indrakumar (SMT) and others, reported in 1996(6) SCC 433 and in the case of Sankalchand Jayantilal Patel (Supra) , record of rights and mutation entries are only one of the modes of proof of enjoyment of the property and such entries do not create any right, title or interest in property. It is required to be noted that the case before the Hon'ble Supreme Court in the case of Sankalchand Patel (supra) was also relating to the provisons of Bombay Land Revenue Code and the Apex Court was dealing with Section 135 of the Code. Even it is the consistent practice and view of this Court as held in catena of judgements that the entries in the record of rights do not confer any right, title or interest in the property and that they are only for the fiscal purposes for collection and payment of revenue.

9. It is the consistent view taken by this Court in catena of judgments that the revenue authorities while dealing with RTS proceedings had no jurisdiction and/or authority to decide the question of title and if there is any dispute with regard to title the parties are to be relegated to the Civil Court. As held by the Hon'ble Supreme Court in the case of STate of GUjarat VS. Patel Raghav Natha - AIR 1969 SC Page 1297 and judgment of this

Court in the case of Ratilal Chunilal Solanki & Ors. Vs. Shantilal Chunilal Solanki - 1996(2) GLR 525 and Siddharth B. Shah vs. State of Gujarat, reported in 1999(3) GLR Page 2527, the revenue authorities cannot decide the disputed question of title to the property and they have to merely go by the documents produced before them. Even this Court has held in the case of Nathabhai Meraman Darji (Supra) that when a document of registered sale deed is produced before the authority, the revenue authorities are bound to give effect to the same and are not required to decide the question of title.

10. Even this Court in a recent judgment in the case of L.R.s of Popat Khima Ramani and Ors. vs. Collector, Rajkot and Ors., reported in 2003(1) GLH 30, has considered the scope of revenue authorities while deciding the question with regard to mutation entry and the powers under SEction 135 and Rule 108, has held that revenue authorities are not to decide the question about title and the revenue authorities are to make necessary entries on the basis of decision of Civil Court. It is further held in the said judgment that the revenue authorities are invested with limited powers under Section 135 and they cannot assume to themselves certain powers conferred on them by law and they cannot assume jurisdiction of Civil Court. The revenue authorities cannot decide validity of transaction on touchstone of statutory provision occurring in some enactment and that they cannot decide disputed question of title. In fact, this Court has gone to the extent that when a dispute as to the title arises the parties have to go to the competent Civil Court. In the present case, in fact the Civil Suit is pending between the parties and the Civil Court is to decide all these questions which are raised by the petitioner in the present Special Civiil Application with regard to validity of the power of attorney, the genuineness of sale deed, and the authority of power of attorney holder on the basis of the power of attorney. Considering the fact that the suit is pending between the parties and that the petitioner has challenged the legality and validity of the sale deed before the Civil Court and that there is an injunction in the said Suit, in fact the Secretary (Appeals) has tried to strike the balance and has tried to protect the interests of all the parties by directing that the factum of injunction granted by the Civil Court should also be noted in the entry and that the entry in favour of respondent No.5 would be subject to the ultimate outcome of the suit pending between the parties in which the legality and validity of the sale deed is challenged. It cannot be said that there is any illegality committed by

the Secretary (Appeals). On the contrary, the judgment and order passed by the revisional authority, i.e. Secretary (Appeals) is in consonance with the provisions of Section 135 of the Bombay Land Revenue Code and 108 of the Bombay Land Revenue Rules and the view taken by the Hon'ble Supreme Court as well as this Court with regard to the powers of revenue authorities while dealing with the question of mutation entries. The revenue authorities are not required to consider with regard to the genuineness of the sale deed, the powers and authority of the power of attorney holder under the power of attorney and the question with regard to the title. What is required to be done by the Sub-Registrar at the time when the sale deed was executed cannot be permitted to be done by the Mamlatdar and/or revenue authorities while deciding the question with regard to mutation entry, more particularly the entry in the record of rights is only having a presumptive value and only for a fiscal purpose of recovering and payment of revenue and it does not confer any right, title or interest in favour of any party in the property.

11. So far as submissions and arguments on behalf of the petitioner that by virtue of the aforesaid transaction that there would be a breach of provisions of the Bombay Prevention of Fragmentation Act as the land would be fragmented and therefore also the respondent could not have purchased the land in question and the said transaction was in breach of provisions of the Act and therefore also the entry in favour of the respondent could not have been made on the basis of the said sale. This aspect is already considered by this Court in the case of Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991(1) GLR 113, and also in the case of Siddharth B. Shah & Ors. Vs. State of Gujarat, reported in 1999(3) GLR Page 2527. This Court in the aforesaid two judgments has considered the scope and ambit of Rule 108 of the Bombay Land REvenue Rules and the jurisdiction of the revenue authorities while considering the RTS proceedings and has held as under;

> "So far as the proceedings under Section 108 of the Rules popularly known as RTS proceedings are concerned it is well settled that the entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by the

> competent authorities under special enactments. Independently the revenue authorities, as mentioned in 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the entry are against the provsions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed."

Considering the judgment of this Court in aforesaid two cases, there is no substance in the argument and submission on behalf of the petitioner to the effect that while considering the RTS proceedings and making necessary entry in favour of the respondents, the revenue authority was also required to consider that by aforesaid transaction there will be breach of provisions o

Fragmentation Act or not and the same is required to be rejected.

12. For the foregoing reasons, the interference of this Court, exercising power under Article 226 and 227 of the Constitution of India is not warranted and the judgment and order passed by the learned Secretary (Appeals) dated 17th January 2004 in Revision Application No. 44 of 2003 is required to be upheld. The Special Civil Application fails and is dismissed accordingly.

rmr. [M.R. Shah, J.]